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APPLICATION NUMBER 6	FILING DATE 7/7/95	MICHELSON FIRST NAMED APPLICANT	ATTY. DOCKET NO. P-12550-DIV
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QM41/0526

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EXAMINER BROWN, M

ART UNIT 3/33	PAPER NUMBER 3
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05/26/98

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 67-90 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 90 is/are allowed.
- ☒ Claim(s) 67-89 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 3733

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 67-89 are rejected under 35 U.S.C. 102(b) as being anticipated by Ma.

Ma discloses in figures 1-16 a distractor instrument comprising a penetration portion 50 that includes a pair of extension members (58a,58b), a longitudinal passageway 53, a barrel portion 54, a shoulder 57 and means 67 for engaging. The penetration portion is a hollow tubular member.

Allowable Subject Matter

3. Claim 90 is allowed.

Art Unit: 3733

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Froning discloses an apparatus for stereotaxic lateral extradural disc puncture. Stavropoulos discloses an apparatus for extracting bone marrow specimens. Kambin discloses a method for decompressing herniated intervertebral discs. Although each of these references discloses structural limitations recited in the claims of the present invention, neither was used to reject any claims, in the first office action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is (703) 308-2682.

M. Brown
May 20, 1998

**MICHAELA A. BROWN
PRIMARY EXAMINER**